

HIGH COURT OF UTTARANCHAL AT NAINITAL

Civil revision No. 31 of 2004

Delhi Cloth Mills Ltd. Revisionist

Versus

Heera Lal Gupta. Respondents

Sri V.K. Bisht, Advocate for the petitioner
Sri Harshbardhan Sah, Advocate for the respondent.

Dated: 16.8.2004

Hon. Rajesh Tandon J.

This revision has been filed against the judgment and decree dated 27.3.2004 passed by the Judge, Small Cause Court, Almora.

Briefly stated the facts giving rise to the present revision are that plaintiff filed a suit under section 20(2)(1) of the U.P. Act nO. XIII of 1972 for eviction, arrears of rent and damages with respect to a shop situated in Lala Bazar, Almora with the allegation that the shop in question was leased out by the plaintiff to the defendant Dehli Cloth Mills Ltd on 1.11.1986 and thereafter a registered lease deed was executed between the plaintiff and the defendant through Sri Brijmohan Agarwal, General Attorney of D.C.M. Ltd. on 16.11.1987. The tenancy was for a fixed term of ten years; but for the first five years the rent payable by the defendant was @ Rs. 1500/- per month and for the next five years @ Rs.1800/- per month. Thereafter, it was agreed between the parties that the lease shall be renewable for

any other period with the consent of both the parties. The plaintiff has submitted that as the ten years' period of lease was expiring on 30.10.1996 and the defendant was not taking any step for the renewal of the lease, the plaintiff by a registered letters dated 31.1.1996 and 13.3.1996 called upon the defendant for renewal of lease. Thereafter by a registered notice under section 106 of Transfer of Property Act, the plaintiff terminated the tenancy and called upon the defendant to pay arrears of rent and to vacate the premises.

The defendant filed written statement alleging therein that there was no lease of the shop in question between the plaintiff and Delhi Cloth Mills Ltd. the premises in question was taken on rent by D.C.M. Ltd. and it was regularly paying the rent to the plaintiff. No notice terminating the tenancy was ever served by the plaintiff on the D.C.M. Ltd. Therefore, the suit has not been filed against the real tenant.

The learned Judge S.C.C. has framed as many as five issues. In order to prove his case the plaintiff has filed certified copy of lease deed dated 16.11.1987, Ex.1 copy of notice Ex.2 & 4 and its registry receipt Ex.7. The plaintiff examined himself as P.W.1. On the other hand defendant has filed general power of attorney of N.K. Garg, copy of lease deed Ex.ka-1, certificate of change of the name of the company and rent receipts and examined its present Special Attorney Sri Om Prakash as D.W.1.

The learned trial Court has held that the plaintiff has rightly terminated the tenancy of the defendant for non-renewal of lease which was for a fixed term and consequently the sessee is liable to be evicted from the shop in question. The Judge, S.C.C. has further decreed the suit for the recovery of Rs.38,100/- as arrears of rent and damages @ Rs.1,800/- per

month for pendente lite and future period. Feeling aggrieved the defendant has filed the present revision.

The suit was filed by the plaintiff against Delhi Cloth Mills Ltd; but it was not contested by the Delhi Cloth Mills Ltd. D.C.M. Ltd. has been found a separate entity independent to Delhi Cloth Mills. D.C.M. Ltd. never applied for being impleaded in the suit as defendant. The Delhi Cloth Mills Ltd. was wound up w.e.f. 31.5.1989. The lease deed has clearly shows that it was tem and parties were required to negotiate and enter into tenancy for any further period. The tenancy was also terminated by efflux of time and the lessee was liable to be evicted. The Judge, S.C.C. has passed decree o0f eviction and for the recovery of rent and damages. I find no infirmity in the order passed by the trial Court.

However, it has been brought to the notice of the Court that Delhi Cloth Mills has already vacated the premises and execution with regard to possession has been satisfied. Both the parties have agreed that the goods recovered from the premises in question shall be handed over to the defendant within a period of three weeks. The decretal amount, which is lying with the execution Court, shall be given to the decree holder.

Subject to the aforesaid observation, the revision is dismissed.

(Rajesh Tandon J.)

Dated: 16.8.2004

*Dhyani